

ROLL CALL

Present: Council Members - Hinchman, Olson, Reid,
Pinkerton and Snider (Mayor)

Absent: Council Members - None

Also Present: City Manager Peterson, Assistant City
Manager Glenn, Community Development
Director Schroeder, Public Works Director
Ronsko, City Attorney McNatt, and City Clerk
Reimche

INVOCATION The invocation was given by Pastor Bob Mattheis, St. Paul's Lutheran Church.

PLEDGE OF ALLEGIANCE The Pledge of Allegiance was led by Mayor Snider.

PRESENTATIONS There were no presentations or awards made at this meeting.

CONSENT CALENDAR In accordance with report and recommendation of the City Manager, Council, on motion of Council Member Reid, Hinchman second, approved the following items hereinafter set forth.

* * * * *

CLAIMS CC-21(a) Claims were approved in the amount of \$3,233,113.06.

[illegible]

PUBLIC HEARING SET
REGARDING EXTENSION
OF SEWER CONNECTION
MORATORIUM

CC-6 The Council set a public hearing for February 21, 1990 to
CC-24(b) consider the extension of the sewer connection moratorium
CC-44 on residential development.

CC-51(a)

On April 6, 1988, the Council adopted Ordinance No. 1424 which imposed a moratorium on all new residential sewer connections to the domestic system, pending the completion of the plant expansion at the White Slough Wastewater Facility. Although the Ordinance states in Section 2 that it is effective "Until the date that the White Slough ... expansion project is completed and operational", there is probably need to formally extend this Ordinance. Under State law (Government Code §65858), the maximum length of time an ordinance adopted in the fashion of Ordinance 1424 can remain effective is 22 months and 15 days.

In order to extend a moratorium, it is necessary to make findings, and adopt a written report describing the measures taken in the interim to alleviate the condition which led to the adoption of the ordinance.

PLANS AND SPECIFICATIONS
FOR BLAKELY PARK POOL
STORAGE FACILITY, 1050 SOUTH
STOCKTON STREET APPROVED

CC-12.1(a) The City Council approved the plans and specifications for Blakely Park Pool Storage Facility, 1050 South Stockton Street and authorized advertising for bids.

The City Council was advised that this project is the construction of a 240 square foot concrete block storage building for pool equipment and supplies. The building will be located immediately north of the mechanical equipment on the east side of the new Mel Enze pool.

Also included is some additional concrete flatwork for storing the pool cover reels.

Plans and specifications were prepared by Morris and Wenell. They have been reviewed and approved by both the Public Works and Parks and Recreation Departments and have been processed by the Building Division.

SPECIFICATIONS FOR
ASPHALT MATERIALS FOR
THIRD AND FOURTH QUARTER
OF FISCAL YEAR 1989-90
APPROVED

CC-12.1(c) The City Council approved the specifications for asphalt materials for third and fourth quarters for Fiscal Year 1989/90 and authorized advertising for bids to be received Wednesday, January 17, 1990.

The City Council was advised that the City advertises for asphalt materials on a semi-annual basis. This bid will cover asphalt materials needed during the third and fourth quarters of fiscal year January 1, 1990 through June 30, 1990.

A recap of the quantities is shown below:

ASPHALT MATERIALS	QUANTITIES
3/8" Asphalt Concrete	1,000 Tons
1/2" Asphalt Concrete	150 Tons

LEASE FOR VINEYARD
ADJACENT TO C-BASIN
ON EAST VINE STREET
EAST OF BECKMAN ROAD
APPROVED

CC-27(b)

The City Council approved the lease for the rental of the vineyard adjacent to C-Basin, on East Vine Street east of Beckman Road, and authorized the City Manager and City Clerk to execute the lease.

The City Council was informed that no work is anticipated at C-Basin this year until after the time the grapes are harvested. D. and B. Jungeblut, who farms the adjacent property on the east side of the basin, wants to again rent the four acres which the City owns. Because of the configuration of the irrigation system and the grapes themselves, the land must be farmed with the adjacent property. The term of the lease is from January 1 through the time the grapes are harvested or December 31, 1990, whichever is first, and rent is \$150 per acre.

Daryl Geweke, who rented the City vineyard to the south of the basin, will be removing the vines from his property and won't be renting that vineyard. It is anticipated that these vines will be pulled in the near future.

FINAL MAP FOR LOT 1
IN LAKESHORE PROFESSIONAL
CENTER, 1420 SOUTH MILLS
AVENUE APPROVED

CC-46

The City Council approved the final map for Lot 1 in Lakeshore Professional Center and directed the City Manager and City Clerk to execute the map on behalf of the City.

This one-lot commercial subdivision is being developed by Darrell Sasaki. All off-site improvements were installed and fees paid under earlier development agreements.

The subdivision is located at 1420 South Mills Avenue and contains 0.58 acre with 12 proposed office units.

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COMMENTS BY CITY
COUNCIL MEMBERS

The following comments were received under the "Comments by City Council Members" segment of the agenda:

CHRISTMAS TREE PICKUP
PROGRAM IN LODI

Mayor Snider posed questions regarding the Christmas tree pickup program in Lodi this year.

DRAFT GENERAL PLAN
REVIEW CONTINUES

Mayor Snider announced that the next Special Joint Meeting of the City Council and the Planning Commission regarding the review of the City of Lodi Draft General Plan will be held Wednesday, January 10, 1990 at 7:30 p.m. at the Carnegie Forum. The focus of discussion for this meeting will be the Land Use and Growth Management Element.

JOINT MEETING WITH
STOCKTON PLANNING
COMMISSION SUGGESTED

CC-6
CC-35

Mayor Snider reported that he had recently attended a Stockton Planning Commission meeting. The Stockton Planning Commission informed Mayor Snider that it is willing to meet and discuss the area between Eight Mile Road and Armstrong Road. Plans are going forward for this meeting.

DISPOSAL OF CHRISTMAS
TREES

Council Member Pinkerton stated that he had recently read an article indicating that in the future it may be unlawful to have Christmas trees because of the space they take in landfills when they are disposed of.

COUNTY SOLID WASTE
MANAGEMENT PROGRAM UPDATE

Following an inquiry by Council Member Pinkerton, City Manager Peterson announced that the subject for discussion at the January 16, 1990 Shirtsleeve Session will be the County Solid Waste Management Program update. Further, the City Manager gave a brief report regarding the subject.

COMMENTS BY THE
PUBLIC ON NON
AGENDA ITEMS

The following comments were received under the "Comments by the public on non-agenda items" segment of the agenda:

CITIZEN EXPRESSES
CONCERN REGARDING
GRAFFITI IN THE LODI AREA

CC-16

Mr. Arthur B. Price, 1056 Port Chelsea Circle, Lodi addressed the City Council regarding his concern concerning graffiti which is appearing in various areas throughout the City including parks and playgrounds. Mr. Price volunteered to assist in the cleanup of graffiti at the English Oaks Commons Park.

Mayor Snider directed that this matter be referred to the Parks and Recreation Commission for discussion and recommendation.

PUBLIC HEARINGS Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Snider called for the Public Hearing to consider the appeal of Jesse Valenzuela of an order to abate an unsafe structure at 321 East Pine Street.

ABATEMENT OF UNSAFE
STRUCTURE AT 321 EAST
PINE STREET, LODI

CC-24(c) Community Development Director Schroeder addressed the City Council regarding the matter advising that A Notice of Public Nuisance and Order to Abate was issued to Mr. Jesse Ruiz Valenzuela, 4521 Rutherford, El Paso, TX 79924, on November 6, 1989.

Mr. Valenzuela contacted the Building Division on October 27, 1989 and was issued a permit for the following: 1) Special Inspection to determine the extent of modification to the detached accessory building to allow use as additional conditioned living space in conjunction with the main living unit; 2) Installation of a new 100 amp electrical service on the main residential structure; and 3) installation of a sub-panel on the accessory building.

The special inspection, conducted on November 3, 1989 by Jim Siemers, Dean Peckham and John Flanagan, revealed that the accessory building in question had been moved onto the lot without permits or inspections, and has been used as a living unit. The building contains a living room, bedroom, bathroom and kitchen/dining area.

Mr. Valenzuela declared that he was issued a permit to move the building onto the site. Investigation of the files and records concerning the address in question reveals that a permit was issued for a concrete foundation on May 12, 1987. No inspection of the foundation was made by any building inspector during the construction phase of the foundation. Mr. Flanagan was called out to inspect it, however the foundation was completed without initial required inspections. The foundation appears to have been constructed with hand mixed concrete, and no knowledge of placement time or possibility of cold joints. At the time of the inspection, there was no building on the foundation.

Moving of the building onto the foundation was done without permits or inspections in violation of Lodi Municipal Code §15304.020, Moving Permits.

Speaking on behalf of the appeal were:

1. Jesse Ruiz Valenzuela, 4521
Rutherford, El Paso, Texas
2. Maria Arambula, 11318 Hermes Street,
Nowalk, CA

There being no other persons wishing to speak on the matter, the public portion of the hearing was closed.

A lengthy discussion followed with questions being directed to staff and to Ms. Arambula and Mr. Valenzuela.

On motion of Council Member Reid, Hinchman second, the City Council ordered the abatement of the subject unsafe structure by repair to bring it up to code and set a deadline of one year from this date for the completion of the necessary work.

PLANNING COMMISSION The Planning Commission has not met since the last report
CC-35 received by the City Council.

COMMUNICATIONS (CITY CLERK)

ABC LICENSE APPLICATIONS

CC-7(f) City Clerk Reimche presented the following applications which had been received for Alcoholic Beverage Licenses:

- a) Ma Luz/Salvador R. Gomez, Productos Mexicanos, 2 North Cherokee Lane, Lodi, Off Sale Beer and Wine License, Original License.
- b) Konstadinos and Loula Taskopoulos, Joe's Steak House, 1110 West Kettleman Lane, Unit 1, Lodi, On Sale General Eating Place, Person to Person Transfer, Premises Transfer.

APPOINTMENT TO LODI SENIOR CITIZENS COMMISSION

CC-2(i) On motion of Mayor Pro Tempore Hinchman, Olson second, the City Council concurred with the Mayor's appointment of Lillian L. Goldsmith to the Lodi Senior Citizens Commission, which term expires December 31, 1993.

RETENTION OF NATURAL STATUS OF THE UNDEVELOPED AREA OF THE MOKELUMNE RIVER BETWEEN WOODBRIDGE AND HIGHWAY 99 URGED

CC-27(a) Following receipt of letters from Dr. and Mrs. D. W. Terry, Jr. and the Oak Grove Docent Council urging the retaining

of the natural status of the undeveloped area of the Mokelumne River between Woodbridge and Highway 99, the City Clerk was directed to advise the authors of the letters that this concern will be addressed when the Open Space Element of the Lodi General Plan is reviewed.

WINE AND ROSES COUNTRY
INN REQUESTS ANNEXATION
OF SECOND PARCEL

CC-8(a)

City Clerk Reimche presented the following letter which had been received from Del G. Smith of the Wine and Roses Country Inn, 2505 West Turner Road:

I am writing this letter on behalf of Wine and Roses Country Inn, requesting that the other half of the original 5-acre Towne Estate (or 2.66+ acres) be annexed into the City of Lodi with C-1 zoning.

Six years ago half of the original historic Towne Estate was split to become Wine and Roses Country Inn. We feel the whole 5-acre estate needs to become part of the City of Lodi to insure the preservation of Lodi's heritage for future generations.

We have a vision for the corner that we would like to proceed with. Until annexed into the City it is difficult for us to begin our planning.

I have met with Jim Schroeder, and his office is in favor of our requested 2.66 C-1 zoning annexation. We are aware of the status of the City sewer plant and hope to be formalizing plans in this interim period. Jim also noted that an EIR report will not be necessary at this time.

I would appreciate if you would let me know what further action I will have to take to apply for this annexation request.

Del G. Smith

The City Clerk was directed to advise Mr. Smith that the City Council will be discussing the City's Annexation Policy at its January 9, 1990 Informal Informational Meeting.

RECESS

Mayor Snider declared a five minute recess and the City Council reconvened at approximately 8:45 p.m.

REGULAR CALENDAR

BIDS REJECTED FOR
CONTRACT FOR WHITE
SLOUGH WATER POLLUTION
CONTROL FACILITY EXPANSION
PROJECT, 12751 NORTH
THORNTON ROAD

CC-12(b)

Following a brief introduction of the subject by City Manager Peterson, City Attorney McNatt advised the City Council that bids for the White Slough Water Pollution Control Facility Expansion Project were previously opened on November 1, 1989. At that time, the City received six bids ranging from approximately \$12M to \$16M. The engineers' estimate was \$8.8M and since the City did not have sufficient funds to award the project as bid, the City Council rejected all bids on November 21, 1989. The Council also approved a revised set of plans and specifications which removed certain items from the bid document. The new bid document also provided for deductive alternate bids on certain items.

On December 15, 1989 the City received the six bids shown on the attached sheet (Exhibit A). These bids include a base bid plus the following six deductive alternates:

- A. Existing digester cover replacement
- B. Storage pond improvements
- C. Irrigation system improvements
- D. Irrigation pump adjustable frequency controllers
- E. Painting existing piping and equipment
- F. Adding 60 days to the contract

It was the original intent of staff to recommend that Alder Engineering be awarded the bid and that the amount of the award be the base bid minus Deductive Alternate A, existing digester cover replacement, and Deductive Alternate D, irrigation pump adjustable frequency controllers.

At the Council meeting of December 20, 1989, the award of the contract was on the agenda. However, on the same day, at approximately 4:00 p.m. a protest was received from F&H Construction Company (the second low bidder) alleging that Alder's bid was irregular. The matter was continued to January 3, 1990 so staff could look further into the matter of the protest. Letters from both Alder and F&H have been received as well as F&H's attorney. After extensive research, it is now evident that the protest by F&H Construction raises valid concerns.

BID REQUIREMENTS

The Instructions To Bidders which all bidders received contain several portions which refer to the regularity and acceptability of bids, such as:

- The owner reserves the right to award the contract by phases, to reject all bids, to waive informalities, and to reject nonconforming, nonresponsive or conditional bids. (pp. 1-2)
- On page B-3, it states that "All blank spaces in the bid form shall be filled. Bids received without all such items completed will be considered nonresponsive."
- At paragraph 10 on page B-4, it is stated that "Owner reserves the right to reject all bids, to award the contract by sections, to waive informalities, and to reject nonconforming, nonresponsive, or conditional bids."
- In the Questionnaire portion of the bid packet, page Q-1, it states "Failure to furnish all information requested in the questionnaire may be a cause for rejection of the bid."

ALDER ENGINEERING'S BID

On page BF-3 of its bid, Alder failed to identify separately the amounts included in its base bid for the lagoon dredge, industrial pump controls and membrane diffused aeration equipment, leaving these lines blank, in apparent contradiction to bidding instructions which state that all lines left blank will result in the bid being deemed nonresponsive.

On page LS-2 of the list of subcontractors, Alder identifies a subcontractor only as "Environmental" which has been challenged by F&H Construction as inadequately identifying a subcontractor. Additionally, no addresses for subcontractors were furnished.

The Questionnaire (pages Q-1 and 2) requires the name of manufacturers of mechanical equipment in 26 categories. Alder originally identified only four of the 26 suppliers, delivering the balance of the names three days after bids were opened. F&H Construction feels this is an irregularity requiring that Alder's bid be rejected.

ANALYSIS

Public Contracts Code Sections 20161(c) and 20162 require competitive bids on public projects such as the White Slough expansion. This same chapter provides other procedural guidelines for bids on similar projects. To facilitate these requirements, bid instructions discussed above were drafted by the City and its consultant Black and Veatch, and were included in the bid information packet. These constitute the rules under which the bids were to be received and the contract awarded. The language of these instructions, cited above, states that where information which bidders "shall" furnish is omitted from the bid forms, the bid "will" be deemed nonresponsive. On the other hand, the Questionnaire states that if all information requested on the Questionnaire is not provided, the bid "may" be rejected. The words "will" or "shall" are generally mandatory, while "may" implies discretion (58 Cal.Jur. 3d, §147).

A contract made in violation of statutes on competitive bidding is illegal and void (Reams vs Cooley, 171 C. 150; 53 Cal.Jur. 3d, Public Works and Contracts, §27). The question here is one of interpretation, i.e., whether Alder's omission in its bid amounted to a simple "informality" (which the Council can waive under the bid instructions) or was an "irregularity", requiring rejection of the bid as unresponsive.

The California Attorney General has previously said that if an error or omission in a bid is "inconsequential" a bid award is proper, but if it is a "substantial deviation" the bid is invalid (47 Ops.A.G. 129). One of the basis for the determination is whether the deviation "...gives a bidder an advantage or benefit not allowed other bidders...." (Id., at 131). As stated in the letter from F&H's attorney, they feel it did allow Alder an advantage.

Helping further define these terms is the case of Konica Business Machines vs Regents of the University of California (1988) 253 C.R. 591, which says a deviation is "substantial" unless it is so inconsequential that it could not affect the bid amount (Konica, Supra, at 594). For example, failure to sign a bid in one place was deemed a minor defect (or "informality") not so great as to invalidate a bid (Menefee vs County of Fresno (1985) 210 C.R. 99).

F&H Construction says that by not including a list of suppliers of mechanical equipment until after Alder was deemed the low bidder, gave Alder the opportunity to "bid shop" its suppliers. "Bid shopping" has been defined by California courts as "the use of a low bid already received by the general contractor to pressure other subcontractors (or suppliers) into submitting even lower bids (Sherman

Company vs Thomason, Inc. (1987) 236 C.R. 577, at 582). This practice is disfavored in California (Pub. Contracts Code, §4101).

While there is no basis to believe Alder has engaged in bid shopping, F&H points out that Alder's failure to include the names of mechanical suppliers in its bid could present an opportunity to do so. "Because of potential for abuse arising from deviation from strict adherence to the standards which promote public benefit, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without compliance with bidding requirements will be set aside. This preventive approach is applied even where it is certain there was in fact no corruption...and the deviations would save the entity money (emphasis added)..." (Konica, Supra at 595).

SUMMARY

This situation admittedly presents a close call, and my opinion is a conservative one which I feel best protects the City. Credible arguments have been made by both bidders, but no matter which course of action the Council may choose, it is possible the matter may be decided in court. There are numerous cases in which unsuccessful bidders have sought to recover costs of preparing the bids, and in some cases also asked for lost profits. The more legally defensible position at this point appears to me to be for the Council to find the omissions in Alder's bid to be substantial, making the bid irregular, nonresponsive and thus unacceptable. While we would obviously prefer to accept the low bid, I believe that action might be challenged successfully. I will be in contact with the legal department of Black & Veatch, the City's consultants, and will keep the Council advised of their recommendations.

If the Council accepts F&H's bid, the total bid award would be:

Base Bid	\$10,397,000
Deductive Alternate A	[181,000]
Deductive Alternate D	[45,000]
Bid Award Amount	<u>\$10,171,000</u>

The Finance Department has determined that over the life of the construction project (19 months) we will have approximately \$11,250,000 available. The expenditures to complete the project are estimated as follows:

Construction contract	\$10,171,000
Contract administration, inspection and O&M Manual	581,000
Discharge permit and dilution study	23,000
Contingencies	300,000

Estimated Cost Total \$11,075,000

Estimated Funds Available \$11,250,000

The City Attorney also discussed the possibility that the City Council may want to rejected all bids and readvertise for bids.

Speaking on behalf of the Alder Construction Company bid were:

- a) Craig Rasmussen, Attorney-at-Law
representing the Alder Construction Company
- b) Donald Fryer, Project Manager, Alder
Construction Company

Speaking on behalf of the F & H Construction Company bid were:

- a) Richard E. Macey, Attorney-at-Law
representing the F & H Construction
Company
- b) Clark Fregien, Secretary-Treasurer, F & H
Construction Company

Following discussion with questions being directed to Staff, Mayor Pro Tempore Hinchman moved to reject the Alder Construction Company bid and to award the bid to F & H Construction Company. The motion was seconded by Council Member Pinkerton, but failed to pass by the following vote:

Ayes: Council Members - Hinchman and Pinkerton

Noes: Council Members - Olson, Reid, and Snider

Absent: Council Members - None

Following additional discussion, on motion of Mayor Snider, Reid second, the City Council based on the findings that the low bidder for the contract for the White Slough Water Pollution Control Facility Expansion Project, 12751 North Thornton Road, Alder Construction Company, had omissions in their bid which made it nonresponsive, and that the second lowest bid of F & H Construction Company was approximately \$500,000 higher than the low bid, rejected all bids and authorized the readvertisement for bids.

The bids are to be received January 16, 1990 and the contract will be awarded on January 17, 1990.

The motion carried by the following vote:

Ayes: Council Members - Olson, Pinkerton, Reid, and Snider

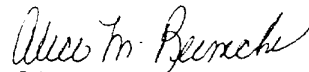
Noes: Council Members - Hinchman

Absent: Council Members - None

ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at approximately 9:55 p.m.

ATTEST:



Alice M. Reimche
City Clerk